



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### Advisory Opinion

June 11, 2002

AO-02-28

Jeffrey Sánchez  
17 Armstrong Street, Apt. No. 3  
Jamaica Plain, MA 02130

Re: City Consultant

Dear Mr. Sánchez:

This letter is in response to your May 14 request for guidance. As a candidate for state representative and a consultant for the Boston School Department, you have asked for advice as to whether M.G.L. c. 55, § 13 would prohibit you from engaging in political fundraising.

You have indicated that you are the sole proprietor of Luna Consulting, a business that you run out of a home office. You are currently under contract with the Boston School Department to conduct an audit of how community issues relate to the schools and to assess the department's capacity to address related issues within the context of its goals and objectives. This contract commenced on January 14 and expires June 30.

At this time, the majority of your income is derived from the school department project, which you have been working on at a rate of approximately forty to fifty hours per week. Depending on your daily schedule, which may involve conducting interviews or research or writing, these hours are either spent in your home office, in the field or at the work space that has been provided to you at the school committee's offices on 26 Court Street.

You have indicated that you are an independent contractor for the purposes of the tax law and receive no benefits from the City of Boston. The school department pays you periodically, based on the hours you have worked, at an hourly rate fixed by the contract. You have indicated that you make and keep track of your own hours, set your own schedule and are not supervised in any way by the school department.

In addition to the contract with the school department, you have a second private client, with whom you meet about once every other week. You are presently seeking advice as to whether your contract with the school department would prevent you from soliciting and receiving political contributions in course of your campaign for state office.

QUESTION

Do the restrictions of § 13 of the campaign finance law apply to a consultant under contract with a public entity under the circumstances described above?

RESPONSE

No. The campaign finance law prohibits any individual "employed for compensation" by a government entity from directly or indirectly soliciting or receiving campaign funds on behalf of a candidate, political committee or for any other political purpose. See M.G.L. c.55, § 13. Section 13 does not apply to independent contractors. See AO-88-19.

An independent contractor is a person who "contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking." The office considers a number of factors in determining whether a person is an independent contractor. Compare AO-98-05 (adult education teacher who set own hours, did not receive benefits and was not supervised or controlled by the town was an independent contractor), AO-95-26 (computer consultant with a state contract and other clients, who set his own hours, was not supervised or controlled by the state, and provided guidance on an as-needed basis was an independent contractor) and AO-93-24 (a volunteer fire fighter was not an independent contractor even though he sets his own hours because he was subject to supervision and control).

You are working on a project for the school department pursuant to a finite contract. Your salary is fixed by the contract at an hourly rate. You determine your hours and are not supervised by any city personnel. You do not receive any work-related benefits. Based on these facts, it appears that you are an independent contractor, rather than an employee of City of Boston, even though you use office space provided by the school committee. See AO-95-26. Consequently, based on these representations, you may solicit and receive political contributions in connection with your campaign for state representative or for any other political purpose.

Please note that this opinion is issued solely within the context of the campaign finance law based on the representations made in your letter and during telephone conversations with OCPF staff.

I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director